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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 68

DELVAILLE H. THEARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The order of the District Court (R. 20, 21) was entered without opinion. The *per curiam* opinion of the Court of Appeals for the Fifth Circuit (R. 24, 25) is reported at 228 F. 2d 617.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on January 6, 1956 (R. 25). A petition for rehearing was denied on January 31, 1956 (R. 26). This Court entered its order allowing certiorari on June 4, 1956 (R. 26). The jurisdiction of this Court rests on 28 U. S. C. 1254.

tioner was represented by counsel, introduced evidence in his own behalf, and testified at length. He admitted to the Committee that he had written the signatures appearing on the note (R. 4). In defense, he sought to establish that at the time of the alleged forgery he was suffering from a form of insanity (R. 3).

After completion of its hearing, the Committee filed a petition in the Supreme Court of Louisiana for petitioner's disbarment on the ground that the evidence adduced before it proved that he was guilty of forging and uttering a note and appropriating the proceeds (R. 4). Petitioner excepted to the maintenance of the proceeding, on the ground, among others, that at the time he had performed these acts [he] "was suffering from a mental illness which rendered him incapable of guilty or wilful conduct and deprived him of the ability to distinguish right and wrong" (R. 6). Petitioner also raised exceptions of prescription, laches, and estoppel.

The exceptions were heard by the Louisiana Supreme Court which held that insanity was not a bar to disbarment. *Louisiana State Bar Association* v. *Theard,* 222 La. 327. As for the plea of prescription, the Supreme Court noted that respondent was confined to an insane asylum for some years and that he was under a judgment of interdiction from June 1941 until May 7, 1948, during which time disbar-

ment proceedings could not be brought against him;[3] and that any prejudice which he suffered as a result of the long delay could be shown when the merits of the case were considered.[4] The Supreme Court, accordingly, overruled petitioner's exceptions.

Following denial of petitioner's application for rehearing, he answered, reiterating the substance of his several exceptions including that of insanity, and contending that the proceeding operated to "deprive him

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[3] The Louisiana State Bar Association began an investigation into complaints of misconduct against petitioner in 1937 but the investigation was abandoned at the request of petitioner's relatives because he was in a sanitarium (R. 9). It also appears from the decision in *State* v. *Theard*, 212 La. 1022, 1027, that on December 13, 1937, petitioner applied for the appointment of a lunacy commission in another criminal proceeding then pending against him; that on April 20, 1938, he was declared presently insane and incapable of assisting at his own defense; and that he was declared sane for purposes of standing trial on May 11, 1944. It further appears from the decision in *Louisiana State Bar Association* v. *Theard*, 222 La. 327, 337, that in June 1941, petitioner was adjudged to be an interdicted person incapable of caring for himself or his property and that this decree was not set aside until May 7, 1948.

[4] The court further noted that, in addition to the conduct specifically charged in the disbarment petition, petitioner had been involved in peculations involving "thousands of dollars belonging to his clients and others extending over a considerable period of time. In the petition, the charge has been limited to a single instance of forgery and uttering. However, counsel for respondent introduced in evidence newspaper clippings and other documents relative to the public scandal and agitation attendant to the discovery of respondent's embezzlements; forgeries and other breaches of trust, his arrest and subsequent incarceration in a sanitarium for mental diseases where he remained for a long time" (222 La. 327, 333, n. 2).

of the procedural due process guaranteed by Section 2 of Article 1 of the State Constitution and by the 14th Amendment to the Constitution of the United States" (R. 4–5).

After issue had been joined, the Louisiana Supreme Court set the matter for a hearing. It appointed a Commissioner to take evidence and report to it his findings of fact and conclusions of law (R. 5). On March 9, 1953, the Commissioner held a hearing in which the greater part of the evidence offered was that introduced in the proceeding conducted by the Committee on Professional Ethics and Grievances (R. 5).

After thoroughly reviewing the evidence, the Commissioner submitted to the Supreme Court of Louisiana a report recommending that petitioner be disbarred. He found that petitioner admitted the commission of the wrongful acts charged; that "it must then, from the record, be held that [petitioner] was suffering under an exceedingly abnormal mental condition, some degree of insanity" (R. 6); but that, as a matter of law, his abnormal mental condition at the time was not a defense to the disbarment proceedings (R. 6).

In the proceeding before the Supreme Court on the Commissioner's recommendation of disbarment, petitioner excepted to the conclusion that his mental condition at the time of the wrongful acts was not a defense to his disbarment (R. 7). The Committee on Professional Ethics and Grievances excepted to that part of the Commissioner's report which held

that petitioner "was suffering under an exceedingly abnormal condition, some degree of insanity" (R. 6, 11).

The Supreme Court adopted the Commissioner's ruling and again rejected the defense of mental illness in accordance with the view expressed in its earlier opinion. *Louisiana State Bar Association* v. *Theard*, 225 La. 98 (R. 2–12).[5] It therefore did not pass upon the Committee's exception. As to petitioner's claim of deprivation of constitutional rights, the court noted that the right to practice law is not "property" or "a natural or constitutional right," but rather, a privilege or franchise, which once granted falls under constitutional protection, *i. e.*, that "[b]efore a judgment disbarring an attorney is rendered, he should have notice of the grounds of the complaint against him and ample opportunity of explanation and defense" (R. 10–11). This requirement, the court held, "has been fully met in the instant proceeding" (R. 11). Accordingly, the court ordered petitioner's name removed from its rolls, and cancelled his license to practice law in Louisiana (R. 11–12). This Court denied certiorari. 348 U. S. 832.

2. Following the entry of the State order, the present proceeding to disbar petitioner in the District Court for the Eastern District of Louisiana was instituted (R. 1–2). The order to show cause referred to the State proceedings, a copy of which was attached

[5] The court noted that its earlier ruling on the mental illness defense "appears to be logically sound; it is supported by competent authority; and no holdings to the contrary have been brought to our attention" (R. 8).

(R. 2–12), and directed, in accordance with Rule 1 (f) of the District Court, *supra*, p. 2, that "unless [petitioner] shows good cause to the contrary within ten (10) days, an order of * * * disbarment * * * shall be entered" (R. 2). In response (R. 12–20), petitioner urged *inter alia* that the Louisiana court had disbarred him "without just cause or reason and by a decree depriving him of his property without due process of law" (R. 13) and that the decree of disbarment was based "on an act committed while [petitioner] was the victim of a mental breakdown, utterly bereft of reason, and unable to distinguish between right and wrong" (R. 13–14). In so urging, petitioner advised that "if [he] had been disbarred because of misconduct intentional and reprehensible for any reason involving moral turpitude or wilful wrong, [he] would not now undertake to show cause why the decree of the Louisiana Supreme Court should not be operative and binding in [the District] Court" (R. 13).[6]

A hearing was held before the District Court at which petitioner offered no evidence. Following the hearing, the District Court, without opinion, entered an order directing that the rule be made absolute and that petitioner's name be removed from the court's roll of attorneys (R. 20–21). On appeal the Court

[6] Attached to petitioner's response was a list of the cases he had since 1948 argued in the Louisiana Supreme Court and the Court of Appeals for the Parish of Orleans (R. 19–20).

of Appeals affirmed in a *per curiam* opinion (R. 24–25) stating:

> Appellant had the burden throughout these proceedings of showing good cause why he should not be disbarred. He offered no evidence and the legal contentions which he urges upon us are not persuasive.

This Court granted certiorari. 351 U. S. 961.

SUMMARY OF ARGUMENT

In this proceeding, petitioner challenges an order of the District Court for the Eastern District of Louisiana disbarring him from practice on the basis of a disbarment order of the Supreme Court of Louisiana because he had committed forgery and fraud. *Louisiana State Bar Association* v. *Theard*, 225 La. 98, certiorari denied, 348 U. S. 832.

Petitioner contends the District Court erred in relying upon the Louisiana proceedings because those proceedings were defective in three respects:

(1) Under the constitution of the State of Louisiana, the Supreme Court could not disbar him because the illegal acts with which he was charged were committed while he was insane;

(2) the disbarment proceedings against him were barred under Louisiana doctrines of prescription and laches because the forgery and fraud with which he was charged had been committed some sixteen years before the disbarment proceedings were initiated;

(3) the State proceedings violated petitioner's constitutional rights because it is a denial of due proc-

ess of law to disbar an attorney for acts of admitted misconduct committed while insane.

Petitioner's first two contentions are foreclosed by the familiar rule that this Court will not review authoritative interpretations of a State's law by its highest court except for conflict with the federal constitution or federal statutes. Further, the State court found that petitioner had made no showing that the delay between his misconduct and the initiation of the disbarment proceedings prejudiced his defense. Nor did petitioner offer evidence to make such a showing in the District Court.

1. Petitioner's contention that the State court proceeding denied him due process of law because it refused to accept his alleged insanity as a defense to the disbarment proceeding is erroneous. It must be noted that petitioner has never been found by any court to have been insane at the time of his fraud. Even if this fact were established, no constitutional right of petitioner is violated by a determination that insanity is not a defense in a disbarment proceeding. The District Court, therefore, acted properly in disbarring petitioner because he was disbarred by the State in which it sits.

An examination of the organization of the federal court system discloses that each federal court has an independent bar whose standards for admission or expulsion are largely conditioned by local requirements. Disbarment from a State court, following the practice of this Court, *Selling* v. *Radford*, 243 U. S. 46, is widely accepted as a ground for disbarment from the District Courts.

The Supreme Court of Louisiana disbarred petitioner because it found that his admitted forgery and fraud demonstrated that he was unfit to serve as an attorney. Challenging this ruling, petitioner contends that his disbarment for acts committed during his alleged derangement deprives him of his vested right to practice law. But it is axiomatic that there is no vested right to practice law. Standing at the bar is subject to substantial judicial protection. But the office of attorney is so permeated with public responsibility that the States may demand the highest qualifications of the practitioner and disbar him if he falls short of them. Cf. *In re Summers*, 325 U. S. 538; *Hawker* v. *New York*, 170 U. S. 189. Certainly, petitioner's admitted forgery and fraud, even if caused by a mental disease, afford a reasonable basis for inferring that he should not be licensed by the State to accept the high responsibilities of an attorney. This view has been shared by the other State courts which have considered the question. See *Re David Y. Patlak*, 368 Ill. 547; *Re Nicolini*, 262 App. Div. 114 (N. Y 1st Dept.). It cannot be said, therefore, that the judgment of the Supreme Court of Louisiana is so lacking in a rational basis as to constitute a denial of due process.

The petitioner relies upon *Wieman* v. *Updegraff*, 344 U. S. 183 and the dissenting opinions in *Barsky* v. *Board of Regents*, 347 U. S. 442. In *Wieman*, however, there was no public interest comparable to the interest operative here—the public's interest in the integrity and responsibility of the legal profession. It cannot be said that acts of theft or fraud, even

when committed under delusion, bear no rational connection to the question of whether their perpetrators should stand at the bar. For the same reasons, the dissents in *Barsky* v. *Board of Regents* are inapplicable.

2. In the absence of valid constitutional objection, it would be unwarranted for this Court, as a matter of judicial administration, to overturn the judgment below on the ground that the District Court had abused its discretion. The rule adopted by the State of Louisiana is, as already noted, accepted by other state courts. In view of the intimate relation between the District Courts and the bars of the States in which they sit, it cannot be an abuse of discretion for a District Court to adopt the same standard as that which prevails in its community. It is undesirable that one who is regarded by the State courts to be unfit for practice should be able to hold himself out as a lawyer because he has retained standing at the federal bar under a different set of governing rules.

For these reasons many courts, by rule or by decision, have adopted the test which this Court has developed to govern members of its own bar who have been disbarred in the States in which they were admitted. *Selling* v. *Radford,* 243 U. S. 46. Under this practice, the judgment of the State court is adopted unless the respondent shows that the State procedure was lacking in procedural due process, that the proof was insufficient to impeach the respondent's character or that some other grave reason exists for not adopting the State decision.

Because there is a wide range over which tribunals can disagree as to what constitutes the essential elements of this test, this Court will not interfere with a lower court's exercise of discretion in a disbarment proceeding except in a case in which the lower court's action is flagrantly improper. But the development of standards to govern the bars of the lower courts has been left to their discretion. On the facts in this case, the action of the District Court was a reasonable exercise of its power to maintain the integrity of the court and to protect the public from injurious acts which, however unintentional, have caused and may cause again substantial losses to helpless clients. For these reasons, we submit that there is no basis for a reversal of the order of the District Court.

3. Should this Court find that the alleged insanity of petitioner at the time he committed the illegal acts for which the State disbarred him is a defense in a disbarment proceeding, the case should be remanded in order that evidence may be adduced on this issue as well as on the extent of his recovery, with particular reference to the danger of a relapse or recurrence.

ARGUMENT

THE DISTRICT COURT'S ORDER OF DISBARMENT VIOLATED NO CONSTITUTIONAL RIGHT OF PETITIONER AND WAS A PROPER EXERCISE OF DISCRETION

INTRODUCTION

Petitioner challenges the order of the District Court for the Eastern District of Louisiana disbarring him from practice in that court on the ground that he was disbarred for professional misconduct by

the Supreme Court of Louisiana. He does not contend that the procedure in the State court denied him adequate notice or opportunity to be heard; or that the District Court's disbarment proceedings were deficient in this respect. He admitted in the State proceeding that he forged the names of two clients to a promissory note, that he used his position as a notary to utter the forged instrument as a genuine mortgage note, and then appropriated the proceeds. *Louisiana State Bar Association* v. *Theard,* 225 La. 98, certiorari denied 348 U. S. 832. But he argues that a mental disorder at the time, the nature of which is not established here, rendered him "unable to distinguish between right and wrong" (R. 9) and consequently absolves him of the high professional obligations which an attorney must otherwise bear; and that this absolution is so complete that the District Court must be reversed for disbarring him on the same grounds as the Supreme Court of Louisiana.

In sum, the petitioner contends that the District Court could not disbar him because the State court proceedings were defective in three respects:

(1) Under the Constitution of the State of Louisiana, the Supreme Court could not disbar him because the illegal acts with which he was charged were committed while he was insane.

(2) The disbarment proceedings against him were barred under Louisiana doctrines of prescription and laches because the forgery with which he was charged had been committed some 16 years before the disbarment proceedings were initiated.

(3) The State disbarment proceedings violated petitioner's constitutional rights because it is a denial

of due process of law to disbar an attorney for acts of admitted misconduct committed while insane.

Petitioner's first two contentions, we submit, are actually arguments that the Supreme Court of Louisiana erred in applying the law of that State to his case. His contention that the Supreme Court of Louisiana lacked jurisdiction to disbar him because of his alleged insanity is a challenge to that court's interpretation of Art. VII, Section 10, of the Constitution of the State of Louisiana.[6a] That interpretation, however, is final and binding upon this Court as an authoritative construction of Louisiana's law which cannot be reviewed here except for conflict with the federal constitution or federal statutes. *Randall* v. *Brigham,* 7 Wall. 523, 540–541; *Kirsh Lake* v. *Johnson,* 309 U. S. 485, 489; *Louisiana ex rel. Francis* v. *Resweber,* 329 U. S. 459.

Similarly, petitioner's arguments of laches and of prescription are attempts to raise here questions conclusively settled under State law by the State court. Petitioner specially pleaded prescription, laches and estoppel before the Supreme Court of Louisiana and that court ruled expressly that "the exception cannot be maintained." *Louisiana State Bar Association* v. *Theard,* 222 La. 327. The court found that petitioner had been under civil interdiction until 1948, an earlier investigation had been deferred at his uncle's request because of petitioner's condition, and petitioner made no showing that the delay prejudiced the preparation of his defense (see R. 12–13). Since petitioner of-

[6a] The Supreme Court * * * shall have exclusive original jurisdiction in all disbarment cases involving misconduct of members of the bar * * *."

fered no evidence to make such a showing in the District Court, this ruling definitively forecloses the question here.

Petitioner's principal attack upon the judgment of the Supreme Court of Louisiana and thereby the judgment of the District Court is based upon his contention that he was disbarred by the Supreme Court of Louisiana for forgery and theft committed while he was allegedly insane, and that the Supreme Court's refusal to accept insanity as a defense to the disbarment proceeding denied him due process of law. It follows, in his view, that the District Court should not have based its determination on the State proceeding.

At the outset, it should be noted that whether or not petitioner was insane at the time of the breach of trust has not been passed on by the District Court nor, for that matter, by the Supreme Court of Louisiana. In the view taken by these courts, that issue was immaterial so long as the misconduct had been admitted. In no proceeding, therefore, has petitioner been declared to have been insane at the time he committed the illegal acts.

Petitioner appears to suggest the contrary in his brief. He says that the decision of the Supreme Court of Louisiana in *State* v. *Theard,* 212 La. 1022, held that he was insane at the time he committed the forgeries and theft. But that case made no such finding. It was an appeal by the State from a dismissal in 1947 of an information for embezzlement involving another client which was filed on September 1, 1936. The information was dismissed because the

State had not brought the matter to trial within the three-year prescription period required by the Louisiana law. In affirming the dismissal, the Supreme Court noted that on December 13, 1937, at the time trial was to commence, Theard had been declared *presently* insane and unable to understand the proceedings against him or to assist in his defense; but that on May 11, 1944, Theard was adjudged to have been restored to sanity. The court ruled that the period from September 1, 1936, when he was charged, to December 13, 1937, when he was declared *presently* insane, could properly be added to the period between the date he was declared to have regained his sanity and the date on which he was finally arraigned. The total period exceeded three years and the case was, therefore, properly dismissed. There was then no ruling by the court as to petitioner's sanity at the time of his forgery and defalcation.

While it is true that the Commissioner who conducted the disbarment proceedings for the Supreme Court of Louisiana concluded that "respondent 'was suffering from an exceedingly abnormal condition; some degree of insanity'", this finding was excepted to by the Louisiana State Bar Association, and was not adopted or rejected by the Supreme Court because that court considered it unnecessary to pass upon Mr. Theard's mental state, in view of its holding that the state of his mind at the time the acts were committed was immaterial. See *Louisiana State Bar Association* v. *Theard*, 225 La. 98, certiorari denied, 348 U. S. 842 (R. 11).

In these circumstances, the question here turns on whether the State court's judgment ordering disbarment for admittedly improper and illegal conduct, regardless of intent, violated petitioner's constitutional rights so as to constitute an improper basis for his disbarment by the District Court. In considering that question, a brief review of the prevailing practice of the District Courts with respect to disbarment may prove helpful.

1. *Present Practice in District Court Disbarment Proceedings*

The present federal procedures with respect to admissions and disbarments underline the intimate relationship which exists between the bars of the several States and the bars of the United States District Courts.

a. *Admissions.*—Admission to the highest court of the State in which the District Court sits qualifies for admission to the bar of the District Court in all of the States. In many jurisdictions, this is an indispensable requirement. In others, admission to the highest court in any State qualifies an applicant.[7] As this Court has indicated, the practice of the District Courts recognizes that it is "the States whose function it has traditionally been to determine who shall stand to the bar." *In re Isserman,* 345 U. S. 286, 287; cf. *In re Summers,* 325 U. S. 561.

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[7] A detailed analysis of the rules and practices governing admission to the district court bars is contained in Survey of the Legal Profession, *Bar Examinations and Requirements for Admission to the Bar* (Ch. III) (1952).

In adopting this course, the District Courts have accommodated to the most striking feature of our federal system—that the federal District Courts function as national tribunals operating against the background of the *corpus juris* of the States in which they sit. Cf. Hart & Wechsler, *The Federal Courts and the Federal System*, 435. Their districts are organized to serve the same communities as the courts of the States; in the exercise of their diversity jurisdiction they enforce the same substantive law as the courts of the States; and they look to the bars of the States as the primary source from which their own bar is drawn.

In consequence, the standards for admission (or expulsion) from the bars of the federal District Courts have been as varied as the widely diversified practices of the States. No uniform rule has ever been established for regulation of the District Court bars by the Congress or by this Court in the exercise of its rule-making powers. *Bar Examinations & Requirements for Admission to the Bar*, 141. See footnote 1, *supra*, p. 2. Indeed, the chief recommendation in the *Survey of the Legal Profession* has been that all District Courts make membership in the bar of the State in which they sit an indispensable requirement. *Bar Examinations & Requirements for Admission to the Bar*, 141. In short, there is no unified federal bar as such, but a congregation of many independent bars reflecting a wide variety of

local conditions and requirements.[8] See *In re Wasserman* (C. A. 9, Oct. 2, 1956).

b. *Disbarments.*—Once an attorney has been admitted to practice in the District Courts he will not be disbarred except for serious delinquencies which reflect discredit upon the legal profession and the courts, or which demonstrate that he is not fit to continue the high responsibilities of an attorney at law. *Ex parte Wall,* 107 U. S. 265; *Ex parte Garland,* 4 Wall. 333.

We have prepared in tabular form, and set out in the appendix to this brief, an outline of the existing District Court rules with respect to disbarment of attorneys from the rolls of the District Courts following state disbarment of those attorneys. *Infra* pp. 35–37. A review of these rules indicates that some twenty-six District Courts automatically disbar attorneys admitted to practice before the District Courts, without further hearing, upon a showing that the attorney has been disbarred by the State court. Approximately twenty-two District Courts have adopted the rule followed by the District Court in the instant case—disbarring an attorney upon a showing of state disbarment, unless he shows good cause to the contrary. Ten District Courts have promulgated rules which effect disbarment upon independent inquiry

[8] Since 1789 each federal court has been responsible for the management of its own bar. The Act of September 24, 1789, Sec. 35, 28 U. S. C. 1654 provides: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel, as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

without relation to state action. The remaining twenty-six courts have promulgated no formal rules.

We find, therefore, that disbarment from the courts of a State has been widely accepted as a ground for concluding that the disbarred attorney lacks "the private and professional character" which is required for membership in the bar of the District Courts. See *Selling* v. *Radford,* 243 U. S. 46. This rule is not followed as a matter of comity but as a substantive standard for continued standing at the bar. *In re Isserman,* 345 U. S. 286.

With this background, we turn to discuss the adoption by the Eastern District of Louisiana, in petitioner's case, of the ground for disbarment relied upon by the Supreme Court of the State in which it sits.

2. No constitutional right of petitioner has been violated

The Louisiana Supreme Court expressly ruled that petitioner's claimed mental disorder (whether so or not) at the time he forged his clients' name did not excuse him from his obligations and duties as an attorney (*Louisiana State Bar Association* v. *Theard,* 222 La. 327, 335–336):

> * * * In disbarment, unlike criminal prosecution or a civil suit for recovery of money based on an offense or quasi offense, consideration of the interest and safety of the public is of the utmost importance for, whereas it may not be humane to punish by confinement to prison one who labored under the inability to understand the nature of his wrongful acts, it is quite another matter to permit such a person to continue as an officer of the court and

> to pursue the privilege of engaging in the honorable profession of counsellor-at-law when he, by his misconduct, has exhibited a lack of integrity and common honesty. And in our opinion it matters not whether the dishonest conduct stems from an incapacity to discern between right and wrong or was engendered by a specific criminal intent.

The Supreme Court thus found that petitioner's conduct had shown him to be one who cannot properly serve as an officer of the court and be trusted to advise and represent clients. We cannot say, that in so ruling, its judgment violated petitioner's constitutional rights.[9]

Petitioner urges that Louisiana's finding that he is unfit for the bar because he has committed forgery and fraud while allegedly deranged deprives him of his vested right to stand at the bar. But it is a postulate of our jurisprudence that membership in the bar is not an absolute and indefeasible right. True, the right of an attorney to appear and argue before a court, once granted, "is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency." *Ex parte Garland,* 4 Wall. 333, 379. However, when there has been appropriate notice and opportunity to defend—and the record here clearly shows that these

[9] This holding was reaffirmed in the Louisiana Supreme Court decision reported at 225 La. 98, (R. 2–12), as to which this Court denied certiorari, 348 U. S. 832.

rights were fully accorded petitioner (see the Statement, *supra*, pp. 3–4, 6)—the nonarbitrary determination of a court that the conduct of an attorney of its bar has constituted "moral or professional delinquency" does not present any question for review.

As Mr. Justice Bradley wrote for this Court in *Ex parte Wall*, 107 U. S. 265, 288–289,

> * * * the action of the court in cases within its jurisdiction is due process of law. It is a regular and lawful method of proceeding, practiced from time immemorial. Conceding that an attorney's calling or profession is his property, within the true sense and meaning of the Constitution, it is certain that in many cases, at least, he may be excluded from the pursuit of it by the summary action of the court of which he is an attorney. The extent of the jurisdiction is a subject of fair judicial consideration. * * * This being so, the question whether a particular class of cases of misconduct is within its scope, cannot involve any constitutional principle.

An attorney may be disbarred for a wide range of delinquencies. See Note, *The Imposition of Disciplinary Measures for the Misconduct of Attorneys*, 52 Col. Law Rev. 1039; Phillips and McCoy, *Conduct of Judges and Lawyers*, Chap. VI; Drinker, *Legal Ethics*, Chap. III. Gross malpractice, dishonesty, or any "conduct greatly affecting his professional character," *Ex parte Wall*, 107 U. S. 265, 273, are traditional grounds for removing persons who are unfit.

The privilege of practicing law, like that of medicine, is so permeated with public responsibility that

the States may demand the highest qualifications of the practitioner (*In re Summers,* 325 U. S. 538; *Hawker* v. *New York,* 170 U. S. 189), and oust him if he does not meet them. Such an ouster "is not by way of punishment; but the Court on such cases exercise their discretion, whether a man whom they have formerly admitted, is a proper person to be continued on the roll or not." *Ex parte Brounsall,* 2 Cowper 829 (K. B. 1778). Disbarment of the unfit is simply an exercise of (*In re Isserman,* 345 U. S. 286, 289):

> * * * a right in the Court to protect itself, and hence society as an instrument of justice. That to the individual disbarred there is a loss of status is incidental to the purpose of the court and cannot deter the court from its duty to strike from its rolls one who has engaged in conduct inconsistent with the standard expected of officers of the Court.

It is for Louisiana to decide what substantive standard of character shall serve to determine the persons who may remain members of its bar. *In re Summers,* 325 U. S. 561. "We do not mean to say that it has an arbitrary power in the matter, or that it can make a conclusive test of that which has no relation to character, but it may take whatever, according to the experience of mankind, reasonably tends to prove the fact and make it a test." *Hawker* v. *New York,* 170 U. S. 189, 195. Cf. *Barsky* v. *Board of Regents,* 347 U. S. 442.

Under these principles, the standard which Louisiana has adopted is not so unreasonable as to "violate a principle of justice so rooted in the tradition and conscience of our people as to be ranked as funda-

mental", *Palko* v. *Connecticut*, 302 U. S. 319, 325. Thefts, embezzlements and forgeries, even where caused by mental disease, afford a reasonable basis for inferring that he who commits them should not be licensed by the State to accept fiduciary responsibilities, at least in the absence of the strongest proof that these aberrations will not recur. There is generally an ever present possibility of a recurrence of anti-social conduct even after one who has committed such acts is restored to that minimum of self-control which is accepted as sanity for civil purposes. The State of Louisiana has, by removing his civil interdiction, found petitioner fit to manage his own affairs. But the question is whether, in the light of his overt breaches of trust in the past, petitioner should be entrusted as a lawyer to manage the affairs of others.

Significantly, the conclusion reached by the State of Louisiana on whether insanity is a defense to disbarment based upon gross misconduct has been shared by the other state courts which have considered the question. See, *Re David Y. Patlak*, 368 Ill. 547; *Re Nicolini*, 262 App. Div. 114 (N. Y., 1st Dept.); cf. *Re Vincent*, 282 S. W. 2d 335 (Ky.); *Re Manahan*, 186 Minn. 98, 101; *Re Bivona*, 261 App. Div. 221, 222 (N. Y., 1st Dept.); *Re Creamer*, 201 Ore. 343; *In Re Kennedy*, 178 Pa. 232. See the discussion *infra*, pp. 28–29. Even though it is recognized that different courses of decision are available, we cannot say that the view of these States so offends fundamental standards of justice as to constitute a violation of the Constitution.

Petitioner's reliance upon this Court's decision in *Wieman* v. *Updegraff*, 344 U. S. 183, and the dissenting opinions in *Barsky* v. *Board of Regents*, 347 U. S. 442, is misplaced. In *Wieman* v. *Updegraff*, a loyalty oath which indiscriminately classified innocent with knowing membership as a prohibitive standard for public employment was invalidated as arbitrary. In that case, there was no balancing public interest which could offer even slight justification for the course which the State had adopted. In this case, there is an overwhelming counter-balance to petitioner's claims—the interest of the public in the integrity and responsibility of the legal profession. The profession has no place for the deranged thief, forger or embezzler. Such persons, however innocent of criminal intent, cannot safely be admitted to the legal profession, because by the test of proven anti-social acts they have shown themselves to be untrustworthy and irresponsible. They are not excluded from the bar to punish them in order to deter others, or even to reform themselves. They are excluded to protect the courts as instruments of justice and the public from ministrations which, however unintentional, have caused and may again cause substantial losses to innocent clients.[10] Cf. *Ex parte Wall*, 107 U. S. 265, 288. Even if petitioner had committed the dishonest acts while insane, in the present state of psychiatric knowledge it cannot be said with a sufficient degree of certainty that a person with as long a period of

[10] In *Barsky* v. *Board of Regents*, 347 U. S. 442, the dissenting Justices felt that the crime of which Barsky had been convicted had no relation to his fitness or capacity to practice medicine.

hospitalization as petitioner had is now so normal that it is arbitrary for the State to take the preventive measure of striking his name from the attorneys' roll.[11]

We submit, therefore, that the Louisiana Supreme Court, in disbarring petitioner from the State courts, deprived him of no constitutional right under the Fourteenth Amendment. And it necessarily follows that the District Court, in following the State Supreme Court, deprived petitioner of no constitutional right under the Fifth Amendment.

3. *The Judgment of the District Court Was a Proper Exercise of Discretion in the Circumstances of This Case*

Absent valid constitutional objection, the issue is whether this Court, as a matter of judicial administration, should overturn the practice of the District Court for the Eastern District of Louisiana and other District Courts adopting the rule followed here, on the ground that its application was such a gross abuse of discretion as to require reversal. We suggest that such a conclusion would be unwarranted.

We need not stress again that into the hands of the legal profession is given the fortune, freedom and even the lives of the men and women who turn to it for aid. As officers of the court they share with the court the responsibility for the administration of justice. Scrupulous policing by the profession and the courts when evidence of misconduct occurs affords

[11] Petitioner offered no evidence in the District Court and did not undertake to prove, by expert testimony, that his mental condition would not recur.

the chief assurance to the public that its rights will be diligently protected and enforced, the client's trust faithfully discharged, and his property honestly administered and protected. "Much of the public suspicion of lawyers is due to the realization that most of the abuses of which lawyers are guilty could be eliminated if the bar and the courts were constantly alert and willing to do their full duty in this regard." Drinker, *Legal Ethics,* 59–60.

The high standard which the profession must enforce within itself and the responsibility of the courts in seeing that this enforcement is carried out supports the determination of the District Court in the instant case.

As we have already suggested, it can hardly be called unreasonable to protect the public from the individual, who, from reasons of mental disorder or otherwise, has demonstrated that he is unfit to discharge the duties and obligations of his profession, and has not affirmatively proved that this unfitness has been removed or that the derelictions will not recur.

This view has been shared by many state courts. The Supreme Court of Illinois, considering the same question, has said in a disbarment proceeding involving an attorney who converted funds of his clients but was later acquitted by reason of insanity (*In re Patlak,* 368 Ill. 547, 553):

> * * * While insanity proved, is a defense to a criminal charge, yet a disbarment proceeding is for more than the single purpose of punishment. There is also the even more

> important purpose of protecting the public from unscrupulous and dishonest lawyers. Though a man be shown to be insane, the public have a right to protection against his activities in the practice of law, particularly when the symptoms of his insanity include a penchant for keeping the money of others without rendering services or account therefor.

The same ruling has been adopted by other jurisdictions which have considered the question. *In re Kennedy*, 178 Pa. 232; *Matter of Bivona*, 261 App. Div. 221 (N. Y., 1st Dept.); *In re Chmelik*, 203 Minn. 156. There appears to be no case to the contrary.

The rationale of these cases has been well expressed by the Supreme Court of Minnesota which said (*In re Manahan*, 186 Minn. 98, 100–101):

> There is much in the unfortunate situation that appeals to the sympathy of the court * * * But for the honor of the profession and the protection of the public there is, in our judgment, no other course open for the court than the exclusion of an attorney from the right to practice law who not only knowingly misappropriate moneys not belonging to him but also deliberately and wrongfully indorses checks in order to obtain the money of others. That his physical condition through inheritance or otherwise subjects him at times to suffering so painful as to affect his mind is pitiable, but does not justify the court in taking chances that, were he again permitted to practice, relapses might occur during which clients in the future would suffer as in the past.

We do not suggest that the rule that was adopted by the State of Louisiana is necessarily the rule that must be followed by all federal courts. We do say, however, that the adoption of such a standard and its application to the instant case cannot be said to be so unreasonable or unjust as to constitute an abuse of discretion.

This is particularly so when the intimate relationships between the Federal District Courts and the bars of the jurisdictions in which they sit are considered. It is difficult to find an abuse of discretion where the District Courts adopt the same standards for disbarment that govern in the States in which they sit. See *In re Wasserman*, (C. A. 9, Oct. 2, 1956). As already noted (*supra*, pp. 18–21), the District Courts depend primarily upon the standards for admission which the courts of the States in which they sit have adopted. It does not seem unreasonable for the District Courts to follow the standards of the State courts in disbarment. For it is generally undesirable that one who is regarded by the State courts as unfit for practice should be able to hold himself out to the community as a lawyer because he has retained standing at the federal bar under a different set of standards. The creation of such a conflict or inconsistency would tend to lead to a disruption of State efforts to maintain a responsible bar, as well as to confusion on the part of the public.[12]

[12] Rule 1 (f) of the Eastern District of Louisiana imposes on an attorney disbarred in any other court the burden of showing

It is for these reasons that many District Courts have adopted the practice which this Court developed to govern members of its own bar who had been disbarred in the States from which they were admitted. *Selling* v. *Radford,* 243 U. S. 46. The Eastern District of Louisiana, the practice of which is challenged here, adopted it by rule. Other courts have adopted it by decision or by construction of their existing rules. *In re Tinkhoff,* 101 F. 2d 341 (C. A. 7) leave to file petition for mandamus denied 296 U. S. 548; *In re Adair,* 34 F. 2d 663 (D. Del.); *In re Barton,* 54 F. 2d 810 (N. D. Cal.); *In re Noel,* 93 F. 2d 5 (C. A. 8). See the discussion, *supra* pp. 18–21, and Appendix, *infra* pp. 35–37.

Under this practice, the judgment of the State court will be adopted unless the respondent shows (*Selling* v. *Radford,* 243 U. S. 46, 51):

> 1. That the state procedure from want of notice or opportunity to be heard was wanting in due process; 2, that there was such an in-

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"good cause" why that disbarment should not automatically operate to effect his disbarment in the Eastern District. *Supra,* p. 2. It seems entirely reasonable that the District Court should be able to accept at face value a disbarment order of the Louisiana Supreme Court, unless and until the disbarred attorney bears his burden of showing that disbarment in the federal court should not automatically follow. In that connection, we note again that petitioner introduced no evidence in the District Court proceeding and made no effort to prove that the earlier derelictions and alleged insanity would not recur. (See R. 25.)

> firmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do.

Of course, there can be and is a wide range over which tribunals may reasonably differ as to what constitutes a "grave reason" for not following a State judgment of disbarment, or as to the elements of proof that good character is lacking. Therefore, in reviewing proceedings of lower federal courts to discipline their own bars, this Court has always felt "the delicacy of imposing its authority" * * * and has not been "inclined to interfere unless it were in a case where the conduct of the circuit court was irregular, or was flagrantly improper." *Ex parte Burr,* 9 Wheat. 529.

Consequently, this Court has not attempted to impose its own judgment as to the proper local criteria for standing at the bar except where improprieties were patent. The Court has corrected a lower court which denied admission to the bar upon a record which plainly showed no reasonable grounds for a refusal to grant admission (*In re Levy,* 348 U. S. 978), and it has reduced the sanction of disbarment to a less severe punishment where the circumstances

did not warrant disbarment. *Sacher* v. *Association of the Bar*, 347 U. S. 388. The test, as announced over a century ago by Mr. Chief Justice Marshall in the *Burr* case, is whether there has been some grave abuse of the wide discretion which the lower courts require for the proper regulation of their bars. But the development of standards to guide that discretion has been left to them.

In the total circumstances of this case—including petitioner's failure to present any pertinent evidence in the District Court (see R. 25)—we submit that the action of the District Court was a reasonable exercise of its power to maintain the integrity of the court as an instrument of justice and protect the public, regardless of the intent of the attorney, against injurious activities in the practice of law.

4. *Should this Court find the action of the District Court to be a gross abuse of discretion, the case should be remanded for further proceedings*

As we have already shown, the record in this case indicates that the court below, following the Supreme Court of Louisiana, found it unnecessary to determine whether the petitioner was sane at the time he committed the illegal acts. If this Court should now find that the insanity of the petitioner at the time he committed the illegal acts prevents the District Court from entering an order of disbarment, the case should be remanded to that court in order that evidence may be adduced on this issue. Further, we would also suggest that the present state of mind of the petitioner should be the subject of pertinent inquiry, with par-

ticular reference to the danger of a relapse occurring during which clients in the future might suffer as have those in the past.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed. In the alternative, the case should be remanded so that evidence may be adduced as to the state of mind of the petitioner at the time the illegal acts were performed and whether at the present time there may be a danger of relapse or recurrence.

Respectfully submitted.

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NOVEMBER 1956.

APPENDIX

United States District Court Rules Concerning the Effect of State Disbarment Upon Their Attorneys [1]

District	State Disbarment Results in Automatic Disbarment, With No Provision for a Hearing	State Disbarment Results in Disbarment Unless Good Cause Shown	Independent Hearing With No Reference Made to State Disbarment	No Rules Pertaining to Disbarment
Alabama:				
Northern				X
Middle				X
Southern	X			
Arizona		X		
Arkansas:				
Eastern	X			
Western	X			
California:				
Northern			X	
Southern		X		
Colorado	X			
Connecticut		X		
Delaware				X
Florida:				
Northern				X
Southern				X
Georgia:				
Northern		X		
Middle				X
Southern				X
Idaho			X	
Illinois:				
Northern	X			
Eastern		X		
Southern		X		
Indiana:				
Northern				X
Southern				X
Iowa:				
Northern		X		
Southern		X		
Kansas	X			
Kentucky:				
Eastern				X
Western			X	
Louisiana:				
Eastern		X		
Western		X		
Maine	X			
Maryland				X
Massachusetts				X

See footnotes at end of table.

United States District Court Rules Concerning the Effect of State Disbarment Upon Their Attorneys[1]—Continued

District	State Disbarment Results in Automatic Disbarment, With No Provision for a Hearing	State Disbarment Results in Disbarment Unless Good Cause Shown	Independent Hearing With No Reference Made to State Disbarment	No Rules Pertaining to Disbarment
Michigan:				
Eastern		X		
Western		X		
Minnesota	X			
Mississippi:				
Northern				X
Southern				X
Missouri:				
Eastern			X	
Western			X	
Montana	[2] X			
Nebraska		X		
Nevada	[2] X			
New Hampshire		X		
New Jersey	X			
New Mexico	X			
New York:				
Northern	X			
Southern	X			
Eastern	X			
Western	X			
North Carolina:				
Eastern			X	
Middle			X	
Western			X	
North Dakota	X			
Ohio:				
Northern		X		
Southern				X
Oklahoma:				
Northern	X			
Eastern	X			
Western	X			
Oregon		X		
Pennsylvania:				
Eastern				X
Middle				X
Western		X		
Rhode Island				X
South Carolina:				
Eastern		X		
Western		X		
South Dakota	X			
Tennessee:				
Eastern				X
Middle				X
Western				X

United States District Court Rules Concerning the Effect of State Disbarment Upon Their Attorneys [1]—Continued

District	State Disbarment Results in Automatic Disbarment, With No Provision for a Hearing	State Disbarment Results in Disbarment Unless Good Cause Shown	Independent Hearing With No Reference Made to State Disbarment	No Rules Pertaining to Disbarment
Texas:				
Northern				X
Southern	X			
Eastern			X	
Western	X			
Utah	X			
Vermont				X
Virginia:				
Eastern				X
Western				X
Washington:				
Eastern			X	
Western		X		
West Virginia:				
Northern	X			
Southern	X			
Wisconsin:				
Eastern		X		
Western		X		
Wyoming				X
Totals	26	22	10	26

[1] The District Court for the District of Columbia and the District Courts of the territories are not included in this tabulation. This survey is based on District Court rules filed with the Department of Justice.

[2] State disbarment is sufficient cause for disbarment.